

2004

Josef Badash
Reg # 56568-054
FMC Devens
PO Box 879
Devens, MA 01432

USDC, NY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 5/22/08

Honorable Richard Berman
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street, Room 650
New York, NY 10007

MEMO ENDORSED

P. 2

May 12, 2008

Re: Josef Badash
04 Cr. 938
Register # 56568-054

Dear Judge Berman:

On December 19, 2005 I was sentenced in your court to five years in prison followed by five years of supervised release. During sentencing, your honor stated and recognized that I am a family man and that I was a member in good standing of a Brooklyn Jewish community. Your honor reviewed the evaluations of four doctors, all concluding that I committed the act due to curiosity and momentary lapse of judgment, and that I am not a threat to the public. Your honor recommended that I be placed in a prison camp facility, but the BOP disregarded your recommendation and placed me among thieves, rapists, murderers, and mobsters. I am still in disbelief over the BOP's explanation – that “the judge can only do two things – put me in prison or take me out, but in between we do whatever we want.”

I came to a recognition that in the USA the justice system does not work to provide justice. I was misinformed and lied to throughout the entire case by my lawyer, the prosecutors, and by the woman that prepared my PSI. My lawyer told me that he spoke with Assistant US Attorney Vincent Torterella, and they came to an agreement that if the doctors' evaluations proved that I was not inherently sick and that I committed the act due to an uncharacteristic error in judgment, they will change the indictment against me to a lesser charge that does not carry a mandatory minimum. This was the first lie. Then when I signed the plea agreement I was told that the advisory guidelines are 61 to 71 months and that the agreement offers me less (60 months). They threatened that if I didn't sign the agreement and I lost at trial they would ask for 30 years because that is their job. My lawyer advised me to sign and not to worry because the judge can do anything, and given the circumstances of my case, the judge would definitely sentence me to less time. If I knew that the guidelines said 41 to 51

months, or if I knew about the mandatory minimum, I never would have signed the plea agreement. When your honor asked me about the agreement in court, I could not keep up with what was being said (my English is not good; this letter is being translated and written for me) and was frustrated – therefore I nodded and said yes to whatever was asked of me. I was not in the right state of mind during sentencing.

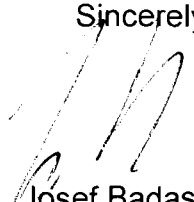
Another time I was misled was during my pre-sentencing investigation. The investigator, Ms. Emily Weinblatt, asked me questions about my intentions, and I explained to her that I had no actual intentions to commit any wrongdoing – that I thought it was all some sort of joke that was being played on me. Ms. Weinblatt said that if she writes what I said you will not accept the plea, and that I must admit that I wanted to commit the act, and that you would take the evaluations under consideration.

I was never told about the mandatory minimum. I made the huge mistake of trusting my lawyer, who kept telling me that he was working with the prosecutors who understood the circumstances and were going to assist in lessening the charge. I paid my lawyer a lot of money (we are not rich and ended up losing what little we had) – instead I could've gotten a public defender for free with the same results.

I read in the newspapers everyday about men who committed horrible acts and were sentenced to less time or the same time in prison as me. A man by the name of Thomas Bender, who sexually assaulted people back in the 1980's, was arrested and sentenced for the same crime as me, and yet he also received 5 years. The fact that he had a prior criminal history made no difference – me and him are the same in the justice system's eyes. Another man by the name of Thomas Saloy, a priest, was caught with over 600 pictures of child pornography on his computer and was sentenced to 3 ½ years in prison.

In light of this, I respectfully request that your honor reconsider your sentencing decision.

<u>Government to respond</u>	
<u>by 6-20-08.</u>	
<hr/>	
<hr/>	
<hr/>	
<hr/>	
<hr/>	
<hr/>	
SO ORDERED: Date: <u>5-22-08</u>	<u><i>Richard M. Berman</i></u> Richard M. Berman, U.S.D.J.

Sincerely,

Josef Badash